

**OPEN RECORDS AND MEETINGS OPINION
2002-O-07**

DATE ISSUED: July 12, 2002

ISSUED TO: Kindred Public School District No. 2

CITIZEN'S REQUEST FOR OPINION

On May 7, 2002, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Daniel Rugroden asking whether the Kindred Public School Board (Board) violated N.D.C.C. § 44-04-20 by failing to give notice of certain meetings.

Mr. Rugroden alleged that the Board held a series of meetings at the Kindred Public School on April 1, 2, 3, and 8, 2002, to interview applicants for school superintendent and on April 11, 2002, to hire a new superintendent. He alleged that the Board failed to post notices of the meetings in the Board office and at the location of the meetings. Mr. Rugroden also alleged that members of the Board, sometimes constituting a quorum, met on five occasions at Dewey's Bar and Grill. He alleged that these meetings were held without proper notice.

The request for an opinion was received May 7, 2002, more than 30 days after three of the Board meetings and three of the "meetings" at Dewey's Bar and Grill. A request for an opinion under N.D.C.C. § 44-04-21.1 "must be made within thirty days after the alleged violation." Thus, no opinion regarding those meetings can be given.

FACTS PRESENTED

The Board held four special meetings to interview four applicants for school superintendent and a special meeting to make a final decision. Notice of the special meeting held on April 8 was faxed to the Cass County Reporter, the official newspaper of the district, on March 23, 2002, and posted in the school district business office and meeting room. At its regular Board meeting held on April 9, the Board set a special meeting for April 11 at which a superintendent was hired. Notice of this meeting was faxed to the Cass County Reporter on April 10, 2002, and posted in the business office and the meeting room. Copies of the notices were enclosed with the Board's response to Mr. Rugroden's request for an opinion.

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Dewey's Bar and Grill is a restaurant and bar in Kindred. The Board explained that after meetings, some members may go to Dewey's Bar and Grill for supper. The number of Board members who go to the bar and grill varies. There are no small rooms or private areas, but only one large room. Board members visit with other people who are there and may sit with them or on occasion may sit together. On occasions when Board members sit together they do not discuss school business or make school related decisions. Such gatherings are described as social. An opinion concerning a request for an opinion regarding a violation of N.D.C.C. § 44-04-20 must be based on the facts given by the public entity or the Board in this case. N.D.C.C. § 44-04-21.1(1).

ISSUE

Whether the Board violated N.D.C.C. § 44-04-20 by failing to provide notice of Board meetings in substantial compliance with that section.

ANALYSIS

The Board is a public entity. N.D.C.C. § 44-04-17.1(12)(b). See also 1997 N.D. Op. Att'y Gen. O-02. All meetings of a public entity must be open to the public except as specifically provided by law. N.D.C.C. § 44-04-19. Public notice of all meetings of a public entity must be given unless otherwise provided by law. N.D.C.C. § 44-04-20(1). Meeting notices must be posted at the Board's office and at the location of the meeting on the day of the meeting. N.D.C.C. § 44-04-20(4). In the case of special meetings that the Board held to interview applicants for the superintendent position and to hire the new superintendent, the Board was required to "also notify the [Board's] official newspaper." N.D.C.C. § 44-04-20(6). Notices were posted at the meeting locations in question, in the school district office, and were sent to the county's official newspaper, the Cass County Reporter. Therefore, it is my opinion that the Board gave proper notice of the meetings held at the school on April 8 and 11, 2002.

Mr. Rugroden also alleges that Board meetings took place at Dewey's Bar and Grill. Not every gathering or series of smaller gatherings collectively involving a "quorum" is a "meeting" required to be open under N.D.C.C. § 44-04-19. 1998 N.D. Op. Att'y Gen. O-05. As the definition of "meeting" indicates, the discussion must pertain to "public business" and does not include social or chance gatherings as long as public business is not considered. N.D.C.C. § 44-04-17.1(8). The open meetings law does not require members of governing bodies to sacrifice personal friendships, and Board members are free to meet socially, even as a group. 1998 N.D. Att'y Gen. O-05. Because the gatherings at the public restaurant and bar were social gatherings and no business was considered, it is my opinion there was no violation of N.D.C.C. § 44-04-20 concerning giving notice of meetings of the Board as defined in N.D.C.C. § 44-04-17.1(8)(b).

Mr. Rugroden also alleged that the Board violated the open records laws. He alleges that certain letters that should be in the Board's records are not there, and thus, are not available for inspection. I am unable to determine based on this general allegation whether a violation has occurred.

CONCLUSION

The Board posted the appropriate notices and sent notices of the special meetings to the Board's official newspaper as required by N.D.C.C. § 44-04-20. It is my opinion there was no violation of N.D.C.C. § 44-04-20 regarding the notices of the special meetings to interview applicants for the position of superintendent and for hiring of the superintendent. It is my further opinion that gatherings of Board members after Board meetings were social occasions and not meetings under the open meetings law for which notices must be given.

Wayne Stenehjem
Attorney General

Assisted by: Thomas A. Mayer
Assistant Attorney General

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Addendum

August 13, 2002

Kindred Public School District No. 2
55 1st Ave S
Kindred, ND 58051

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Since issuance of our July 12, 2002, opinion, 2002 N.D. Op. Att'y Gen. O-07, additional information has come to this office's attention regarding the notice of the April 8 and 11, 2002, special meetings of the Kindred Public School Board (Board). The purpose of the April 8 meeting was to interview a candidate for the superintendent's position. The purpose of the April 11 meeting was to select a superintendent for the school. The July 12 opinion concluded that notices of the special April 8 and 11 meetings that contained the pertinent information required by N.D.C.C. § 44-04-20(2) were faxed to the Cass County Reporter and posted in the business office and at the meeting room in accordance with N.D.C.C. § 44-04-20(2), (4), (6). Further investigation reveals that sufficient notices of the special meetings of April 8 and April 11 were not filed with the county auditor as required by N.D.C.C. § 44-04-20(1), (2), (4).

Section 44-04-20(4), N.D.C.C., requires the notice filed with the county auditor to contain the date, time, and location of the meeting, and the topics, if practicable. Notice of a special meeting must be mailed to the public entity's official newspaper, and topics considered at a special meeting are limited to those included in the notice to the media. N.D.C.C. § 44-04-20(6). Section 44-04-20(1), N.D.C.C., requires notice to be given in advance of all public meetings. N.D.C.C. § 44-04-20(9) provides that notice of public meetings is to be in substantial compliance with the requirements of section 44-04-20.

The Board filed a notice with the county auditor on April 9. With regard to the April 8 meeting, the notice indicated the topic was to interview candidates for the superintendent opening. It did not give the time or location of the meeting and was not filed in advance of the meeting. With regard to the April 11 meeting, the notice said "[t]his is a notice of a special board meeting scheduled for Thursday, April 11th at 7:00 a.m."

1. April 8 meeting notice.

The notice of the April 8 meeting was filed on April 9, after the meeting. While this office has concluded notice provided after a meeting to be in substantial compliance with N.D.C.C. § 44-04-20 when advance notice was not reasonable, there is no indication that advance notice of the April 8 meeting was not reasonably possible. See 1998 N.D. Op. Att'y Gen. O-13, citing 1998 N.D. Op. Att'y Gen. O-10. Indeed, a notice of the April 8 meeting was faxed to the Cass County Reporter on March 28, 2002. Filing advance notice of a meeting at the central filing place (the county auditor's office for the school board) is a mandatory requirement to assure that the public has a certain place to check for notices of all school board meetings. N.D.C.C. § 44-04-20(3), (4). See 2001 N.D. Op. Att'y Gen. O-07 ("The notice must be filed in the appropriate central location" as well as posted at the main office and the meeting location). See also 2001 N.D. Op. Att'y Gen. O-05 ("Failing to post and file a notice of a meeting is not substantial compliance with N.D.C.C. § 44-04-20.") But see 1998 N.D. Op. Att'y Gen. O-09 (concluding there was substantial compliance when the only alleged deficiency was

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failure to post a notice at the location of a township board meeting because notice was published twice in a local paper).

Thus, in this case, it is my opinion that failure to file a notice listing the time, date, location, and topic of the special meeting of April 8 in advance of the meeting with the county auditor was a violation of N.D.C.C. § 44-04-20(2).

2. April 11 meeting notice.

The Board notified the Cass County Reporter of the April 11 special meeting, posted a notice in the business office and at the meeting room, and filed a notice with the county auditor. The notice filed with the auditor stated the time and date of the special board meeting, but it did not indicate the location of the meeting or the topics to be considered as required by N.D.C.C. § 44-04-20(2).

“Filing notice of meetings with a county auditor is particularly important.” 2000 N.D. Op. Att’y Gen. O-03. As noted, this requirement gives the public a certain place to check for notices of all school board meetings. “For special meetings. . . notice must be posted and filed the same as for a regular meeting but in addition, the [official] newspaper must be notified of the meeting, including the ‘time, [place,] date, and topics to be considered.’ N.D.C.C. § 44-04-20(6).” 1998 N.D. Op. Att’y Gen. O-01. See also 2001 N.D. Op. Att’y Gen. O-15 (notice of a special meeting insufficient where it omitted description of executive session).

Because the centrally filed notice of the April 11 meeting did not contain the location or the topics of the meeting, it did not substantially comply with N.D.C.C. § 44-04-20(2).

Remedy

To remedy the failure to file in a central location the Board must 1) supplement the minutes of the April 8 meeting to reflect the interview questions and responses, and other discussion that took place at that meeting and 2) supplement the minutes of the April 11 meeting to reflect the position and comments of each Board member on the selection of the superintendent. The Board must also file a revised notice containing the date, time, location and topic of the April 8 and April 11 meetings with the county auditor. The notice must indicate where a copy of the supplemented minutes of both meetings may be obtained. See 1998 N.D. Op. Att’y Gen. O-18.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory, costs, disbursements, and reasonable attorney’s fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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Sincerely,

Wayne Stenehjem
Attorney General

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cc: Jon M. Arntson, Attorney At Law
Daniel Rugroden